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INFO RUEHXR/RWANDA COLLECTIVE PRIORITY
RUEATRS/DEPT OF TREASURY WASHDC
RUEAWJA/DEPT OF JUSTICE WASHDC

C O N F I D E N T I A L NAIROBI 000532

SIPDIS

DEPT FOR AF/E, AF/EPS
DEPT FOR EEB/IFD/OMA, INL/C/CP
STATE PASS TO TREASURY FOR VIRGINIA BRANDON
STATE PASS TO COMMERCE FOR BECKY ERKUL
STATE PASS TO JUSTICE AFMLS JACK DEKLUIVER
STATE PASS TO JUSTICE FOR OIA, AND OPDAT
STATE PASS TO TREASURY FOR FINCEN JERRY CRAWFORD

SIPDIS

E.O. 12958: DECL: 02/22/2028

TAGS: [KCRM](#) [KCOR](#) [EFIN](#) [KE](#)

SUBJECT: CHARTERHOUSE BANK SCANDAL: THE BAD GUYS ARE STRIKING BACK

REFS: (A) 07 NAIROBI 3231, (B) 07 NAIROBI 2754, (C) 07 NAIROBI 1185,
(D) 06 NAIROBI 4421

Classified By: A/DCM John Hoover for reasons 1.4 (B) and (D).

¶1. (C) Summary: Central Bank of Kenya (CBK) officials believe Chief Justice Evans Gicheru's sudden decision to give priority to hearing appeals by the money laundering Charterhouse Bank to remove the statutory manager, rather than hearing the CBK's appeals, indicates that Gicheru has been compromised. Behind this activity is Charterhouse investor and notorious gangster John Haroun Mwau, who was recently elected to Parliament. These intrigues demonstrate the weakness of Kenya's judicial system, and could prevent the Ministry of Finance and CBK from liquidating the bank, or even force its reopening. In response to these developments, the Ambassador sent letters to the Attorney General, and the Ministers of Finance and Justice expressing concern about management of the case. End summary.

Background

¶2. (U) On the basis of strong evidence showing Charterhouse Bank was engaging in large-scale tax evasion and money laundering over a period of several years, the CBK and the Ministry of Finance put Charterhouse under statutory management in June 2006. Charterhouse proceeded to blitz the CBK and the Ministry with 22 court applications, four of which are suits against the CBK by alleged depositors in four courts across Kenya. Judges in smaller cities were somehow more amenable to ordering that Charterhouse be reopened for business, but CBK held firm and appealed these decisions. In December 2006, Finance Minister Amos Kimunya refused to renew Charterhouse's operating license, leaving it in legal limbo and unable to re-open. In March 2007, a court in Milimani, Nairobi ruled unambiguously in the CBK's favor. On June 22, 2007, High Court Justice Warsame in Nairobi agreed with the CBK that Charterhouse-inspired legal mischief had made it impossible to definitively resolve the case and extended the CBK's statutory management mandate by one year.

¶3. (U) In early 2006, CBK asked Chief Justice (CJ) Gicheru to consolidate all the Charterhouse cases and appeals. In December 2006, Attorney General (AG) Amos Wako also sent a letter to CJ Gicheru noting that "Encouragement was being given to litigants to file cases on the same issues in different courts with a view to obtaining favorable and/or different judgments from the courts." He also criticized the Eldoret High Court's November 2006 ruling demanding removal of the statutory manager and reopening of the bank

as an infringement of the AG's constitutional mandate. Wako asked CJ Gicheru to consolidate all the Charterhouse cases and appoint two judges to hear them. CJ Gicheru waited until July 27, 2007 to issue an order for the case files from the Court of Appeal and the High Courts in Milimani, Eldoret, Kitale, and Malindi. He also criticized AG Wako for suggesting to him how to handle the case, expunged Wako's letter from the file, and ordered him to pay court costs. However, Gicheru took no further action, despite CBK's continued requests to expedite and consolidate the process.

14. (C) In a related matter, after former CBK Governor Andrew Mullei opened and pursued the Charterhouse investigation, he was suspended in early 2006 on flimsy charges that he had not followed proper procurement procedures in hiring the forensic auditors. He won acquittal in May 2007, and called the decision a vindication of his probe into Charterhouse. However, upon leaving the court, Dr. Mullei was served with court papers notifying him that businessman John Haroun Mwau had filed a defamation suit for Mullei's allegations that Mwau had used Charterhouse to evade taxes and launder money. The suit does not appear to have been heard yet in court. Mwau is widely believed to be a silent partner in Charterhouse and to be (or to have been) a major drug trafficker. In the December 27 Parliamentary elections, Mwau was elected Member of Parliament.

Chief Justice Gicheru's Action Appear Biased

15. (SBU) On December 20, 2007, Charterhouse applied to the Court of Appeal to set aside Justice Warsame's rulings, but CJ Gicheru did not accept the application. On February 1, 2008, CJ Gicheru suddenly and without consulting CBK accepted Charterhouse's appeal, and set a short-fuse hearing date of February 6. Charterhouse's application challenged the impartiality of two of the three judges on the Court of Appeal panel who had previously heard the cases and ruled in favor of CBK. Judges Onyango and Kithinji recused themselves on February 1. Gicheru has not yet named their replacements, but did set April 21-23 for the hearing date. Gicheru, however, did not use the February 1 or February 6 appearances to set a hearing date for CBK's appeals, or consolidate them as requested.

Mwau's Lawyers Demand Documents from CBK

16. (C) CBK statutory manager at Charterhouse, Rose Detho (protect), told Econ Specialist that lawyers for Pepe Ltd (John Haroun Mwau's shipping and warehouse firm) have served CBK with letters demanding CBK provide copies of all reports CBK has on Charterhouse Bank, Charterhouse's license renewal application, communications between CBK and Ministry of Finance, and the statutory manager's report on the bank. Detho said the demands are an effort by Mwau to intimidate CBK into renewing the bank's license and allowing it to reopen. (Note: Pepe Ltd is the firm from whose premises a one-ton, Ksh6.2 billion (\$1 billion) cocaine shipment in a container was seized in 2005, adding to suspicions that Mwau is a drug smuggler. End note.)

17. (C) Detho is anxious to liquidate Charterhouse, both to stop its malpractices and money laundering from re-starting, and to preserve the credibility of the CBK as a regulator. She fears that Charterhouse's directors, depositors, and owners, including Mwau, may take advantage of the country's current political crisis to overturn Justice Warsame's ruling confirming CBK's closure of the bank. She regards CJ Gicheru's failure to consolidate CBK's appeals and to set hearing dates, his sudden acceptance of Charterhouse's appeal and its request for new judges, and setting the short-fuse hearing date all as evidence the Chief Justice has been compromised. She suspects that Mwau is using his new position as an MP to pressure the CJ and the CBK to allow Charterhouse to reopen. Waiting until late April to hear Charterhouse's appeal may also interfere with extension of the statutory manager's position in June.

Ambassador's Letters Expressing Concern to Ministers

18. (C) On February 14, the Ambassador sent letters to Attorney General Wako, Finance Minister Kimunya, and Minister of Justice and Constitutional Affairs Karua expressing U.S. concern about the management of the Charterhouse Bank case (texts below). The letters note that expeditious and transparent resolution of the case is critical to demonstrating Kenya's will to prevent money laundering and protect both the integrity of Kenya's financial system and the

credibility of Kenya's court system. Wako responded on February 21 by confirming he would soon make public his decision on the investigation by the Criminal Investigation Division (CID) into Charterhouse's violations of the Banking Act. But he noted that he was still waiting for the files from Kenya Revenue Authority (KRA) and Kenya Anti-Corruption Commission (KACC) regarding their investigations of tax evasion and proceeds of crime.

Comment

¶9. (C) The poor management and delays in the Charterhouse case clearly illustrate why Kenya's judicial system has so little credibility in or outside the country. The tenacity of Charterhouse's owners and managers and their skillful manipulation and corruption of the judicial system also indicate they have much to hide and much to gain from recapturing control of the bank. Failure to liquidate Charterhouse and prosecute the colluding managers and depositors would be a major defeat for Kenya's financial regulators, its legal system, and its international standing in the struggle to fight drug and weapons trafficking, corruption, terrorist finance, and tax evasion. Although political reform initiatives to resolve the current political crisis will likely dominate Kenyan politics for the next year or two, we will look for every opportunity to press for passage of the anti-money laundering bill that died in Parliament in ¶2007.

¶10. (SBU) Begin text of letters:

February 14, 2008

Dear Honorable Wako:

I am writing to express urgent concern about the status and future handling of the Charterhouse Bank case.

I commend your efforts to bring the case to appropriate closure in the courts, and hope you will continue to press for the various appeals filed by alleged customers of Charterhouse to be consolidated by the Chief Justice and given a hearing date.

We do not have any information that is not already available to your office or to the Central Bank of Kenya (CBK). But the information we have indicates clearly that Charterhouse Bank management conspired with depositors to evade import duties and taxes and launder the proceeds of these crimes in a total estimated at approximately \$500 million from 1999 to 2006. Charterhouse Bank also likely violated the Banking Act, the CBK's Prudential Guidelines for recording foreign currency transactions, and the CBK's know-your-customer procedures.

As you know, how the case is resolved is critical to Kenya's international standing and to the integrity of its financial system. Any backsliding on the issue will seriously undermine our joint efforts to combat money laundering and all of its associated evils, including drug and people trafficking, weapons proliferation, corruption, terrorist finance, and tax evasion. The credibility of Kenya's court system is also on the line with this case.

I urge that the Charterhouse case be handled in an expeditious and transparent manner that will build local and foreign confidence in Kenya's dedication to enforcing its laws and protecting its financial system from abuse and money laundering. If the United States can be of any assistance in this matter, please do not hesitate to contact me.

Sincerely,
Michael E. Ranneberger
Ambassador

The Honorable
Amos Wako
Attorney General
Nairobi

February 14, 2008

Dear Ministers:

I am writing to express urgent concern about the status and future handling of the Charterhouse Bank case.

We understand that Chief Justice Evans Gicheru recently rejected a letter from Attorney General Wako asking that several Central Bank of Kenya (CBK) challenges to cases lodged against it by alleged Charterhouse customers be consolidated and given a hearing date. In fact, we understand that these appeals have been pending with the Chief Justice for over two years. We also understand that while refusing to take action on CBK's appeals, the Chief Justice is moving forward to set a hearing date for the Charterhouse appeal seeking to remove CBK as the bank's statutory manager.

We do not have any information that is not already available to your ministries and to the CBK. But the information we have indicates clearly that Charterhouse Bank management conspired with depositors to evade import duties and taxes and launder the proceeds of these crimes in a total estimated at approximately \$500 million from 1999 to 2006. Charterhouse Bank also likely violated the Banking Act, the CBK's Prudential Guidelines for recording foreign currency transactions, and the CBK's know-your-customer procedures.

I realize the issue is now before the courts and thus outside of your direct jurisdiction. However, how the case is resolved is critical to Kenya's international standing and to the integrity of its financial system. Any backsliding on the issue will seriously undermine our joint efforts to combat money laundering and all of its associated evils, including drug and people trafficking, weapons proliferation, corruption, terrorist finance, and tax evasion. The credibility of Kenya's court system is also on the line with this case.

I urge that the Charterhouse case be handled in an expeditious and transparent manner that will build local and foreign confidence in Kenya's dedication to enforcing its laws and protecting its financial system from abuse and money laundering. If the United States can be of any assistance in this matter, please do not hesitate to contact me.

Sincerely,
Michael E. Ranneberger
Ambassador

The Honorable
Martha Karua,
Minister of Justice and Constitutional Affairs,
Nairobi.

The Honorable
Amos Kimunya
Minister of Finance
Nairobi.

End texts.

RANNEBERGER